CAPITAL CASE: EXECUTION MAY 21, 20026 AT 10:00 AM
Case No: 26-5433

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TONY VON CARRUTHERS,
Plaintiff/Appellant

v.

JONATHAN THOMAS SKRMETTI, ET AL.,
Defendants/Appellees

On appeal from the United States District Court
for the Middle District of Tennessee
Case No.: 3:26-dv-540

APPELLANT'S REPLY BRIEF

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ARGUMENT[1]

Appellant Tony Carruthers hereby replies to the *State Defendants' Response Brief* filed May 18, 2026, at 10:50 p.m. (Dkt. 10) (the "**Response**," cited as "RB"). Constrained by the exigencies of time, as Mr. Carruthers faces execution in less than 48 hours, this document does not seek to address all of the factual and legal flaws in the Response but rather to show the Court that this appeal is worthy of judicious deliberation.

I. The District Court abandoned this Court's caselaw in reviewing Mr. Carruthers' Motions.

The Response minimizes the District Court's explicit abandonment of Sixth Circuit law in reviewing Mr. Carruthers Motions, which is basis alone to reverse the District Court's ruling. (*See* IB Part I.) At the outset, for the reasons discussed in the Initial Brief and further in Parts II and III below, the District Court erred in concluding that Mr. Carruthers did not show a likelihood of success on the merits. But regardless, the District Court's Opinion rested on legal error in abandoning this Court's

[1] Unless noted otherwise, all capitalized terms have the same meaning as in *Appellant's Initial Brief* (Dkt. 7), which is referenced as the "Initial Brief" and cited as "IB."

precedent on reviewing preliminary injunctions in this circumstance. Attempting to circumvent this error, the Response misapplies authority and trivializes the harm at stake—which the District Court recognized. (Op., at 52 (recognizing the "stakes are so high").)

The Response cites this Court's decision in *Churchill Downs Technology Initiatives Co. v. Michigan Gaming Control Board*, 162 F.4th 631, 637 (6th Cir. 2025), for the proposition that "[s]howing only one element 'isn't enough.'" (RB 20.) However, the Court's statement in *Churchill Downs* was related to whether the movant had *also* shown "some irreparable harm will take place without the court's immediate intervention." *Id.* (quoting *EOG Res., Inc. v. Lucky Land Mgmt., LLC*, 134 F.4th 868, 883 (6th Cir. 2025)). *Churchill Downs* was about interstate wagers on horseraces. *See generally id.* Here, the State is literally gambling with Mr. Carruthers' life. The irreparable harm is undeniable.

Further, the Response relies on this Court's decision in *EOG Resources*, 134 F.4th 868. (RB 21.) Again, the issue there was that the movant did not show irreparable harm. That was the basis for the error. *See EOG Res., Inc.*, 134 F.4th at 885. As the Court said: "No irreparable harm? No preliminary injunction." *Id.* That case was about damage to

real estate. The Court determined that the requested preliminary injunction would have "*cause*[d] an irreparable injury, not to *prevent* one." *Id.* Here, the opposite is true. There is no prejudice to the State in delaying Mr. Carruthers' execution to determine his guilt, whereas the *only* way to avoid irreversible, final harm to Mr. Carruthers is to enjoin the State from executing him.

In *EOG Resources*, this Court said: "Once trees are down, they don't go back up." Here, Mr. Carruthers is the tree. Once the State kills him, it cannot be reversed—even if testing of the fingerprints and DNA proves his innocence.

II. Mr. Carruthers has standing to raise his claims below.

A. *Rooker-Feldman* does not bar Mr. Carruthers' claims.

In attempting to dispute Mr. Carruthers' argument that the District Court erred in holding that *Rooker-Feldman* bars four of his five claims, the Response ignores an entire line of precedent discussed in the Initial Brief. Not once does the Response even cite the U.S. Supreme Court's decision in *Bouie v. City of Columbia*, 378 U.S. 347 (1964). (*See generally* RB.) Nor does it cite *Shuttlesworth v. City of Birmingham*, 382 U.S. 87 (1965), or *Cole v. Arkansas*, 333 U.S. 196 (1948). (*See generally*

Resp.) This line of cases establishes that Mr. Carruthers' claims are not barred by *Rooker-Feldman*. (IB 30-34.) The Response has no answer.

In the *Bouie* line of cases, the Supreme Court established that arbitrary and irrational judicial interpretation of state legislation violates due process. U.S. Const. amend. XIV; (*see* IB 30-34.) That is exactly the issue in Mr. Carruthers' claims below and the type of claim that is cognizable in a § 1983 claim. (*See* IB Part II.)

The Supreme Court's decision in *Skinner v. Switzer*, 562 U.S. 521 (2011), confirms the cognizability of precisely the claim Mr. Carruthers brings. In *Skinner*, a Texas death-row prisoner alleged that the State's refusal "to release the biological evidence for testing . . . has deprived [him] of his liberty interests in utilizing state procedures to obtain reversal of his conviction and/or to obtain a pardon or reduction of his sentence." *Id.* at 530. The Court held that this claim was cognizable under § 1983 and was not barred by *Rooker-Feldman* because the prisoner "did not challenge the adverse [state court] decisions themselves" but rather "target[ed] as unconstitutional the [state] statute they authoritatively construed." *Id.* at 532. Mr. Carruthers' claim is indistinguishable: he challenges the Acts as authoritatively construed by Tennessee courts to

deprive him of his liberty interest in accessing those statutory procedures.

Reed v. Goertz, 598 U.S. 230 (2023), reinforced this framework. There, the Court confirmed that a § 1983 procedural due process challenge to a state's post-conviction DNA testing law is cognizable where the plaintiff did not challenge the adverse state-court decisions themselves, but rather targeted as unconstitutional the state statute they authoritatively construed. *Id.* at 235. The Court further held that a prisoner had standing to bring such a claim because "denial of access to the requested evidence" constituted a cognizable injury in fact. *Id.* at 234. Mr. Carruthers' case is on all fours: he challenges the Acts as authoritatively construed by Tennessee courts, and he has been denied access to the forensic evidence the Acts were designed to provide.

Most recently, in *Gutierrez v. Saenz*, 606 U.S. 305 (2025), the Supreme Court squarely reaffirmed the *Osborne*/*Reed*/*Skinner* framework in a case materially indistinguishable from this one. There, a Texas death-row prisoner filed suit under § 1983 alleging that Texas's post-conviction DNA testing statute, as authoritatively construed, deprived him of his "liberty interest in utilizing state procedures to obtain

an acquittal or sentence reduction." 606 U.S. at 312. The Supreme Court reversed the U.S. Court of Appeals for the Fifth Circuit, holding that convicted individuals "have a liberty interest in demonstrating [their] innocence with new evidence under state law." *Id.* at 314 (quoting *Dist. Attorney's Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68 (2009)). Mr. Carruthers' case is materially indistinguishable from *Gutierrez*: he is a death-row prisoner who has filed a § 1983 action challenging state-created post-conviction forensic testing procedures as authoritatively construed, asserting the identical liberty interest in accessing DNA and fingerprint evidence that could demonstrate his innocence.

Therefore, just like the District Court's analysis, the Response's argument under *Rooker-Feldman* is misguided and fails.

B. The District Court had the power to stay Mr. Carruthers' execution.

The Response's second argument that the District Court did not have the power to stay Mr. Carruthers' execution is not only incorrect but perpetuates the procedural runaround that the Tennessee courts have used, for years, to deny Mr. Carruthers access to Tennessee's statutory procedures for testing available evidence before his execution. *See generally Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). The

Response argues that "[a]ll [Mr. Carruthers] could hope to win through his procedural challenge" in the District Court "is an order directing the production of evidence for testing—not an alteration of his conviction or sentence." (RB at 28.) This fundamentally distorts the nature of this case.

Again, this case is straightforward: Mr. Carruthers is set for execution in less than 48 hours for crimes he maintains he did not commit. Based on Tennessee statutes, he sought forensic testing of available evidence that could prove his innocence. He has been unconstitutionally denied access to those statutory procedures. He sought redress for that denial in the District Court. Had he been provided the ability and time to proceed on the merits of his underlying claims and succeeded, Mr. Carruthers would be *finally* given access to test the available evidence under Tennessee's statutory procedures. After obtaining that information, the parties would address the outcome of such testing.

The fundamental purpose of a preliminary injunction is "preserve the court's ability to render a meaningful decision after a trial on the merits." *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978) (quoting *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir.

1974)). This is often referred to as maintaining the "status quo." *Id.* Here, the status quo is that Mr. Carruthers is alive. Contrary to the Response's contorted argument, the District Court had the power to grant the Motions to effectuate that status quo while the case continued.

III. Precedent is clear that Mr. Carruthers has a cognizable liberty interest.

The Response concedes that Mr. Carruthers "can have a liberty interest in attacking his conviction as a product of Tennessee law." (Resp. 39.) That concession is dispositive as to Count V of Mr. Carruthers' Amended Complaint.

The Supreme Court has held, repeatedly and unequivocally, that individuals convicted of crimes in state court "have a liberty interest in demonstrating [their] innocence with new evidence under state law." *Gutierrez*, 606 U.S. at 314 (quoting *Osborne*, 557 U.S. at 68). Tennessee affirmatively created, through the DNA Act and the Fingerprint Act, statutory procedures that provide inmates a defined mechanism to access post-conviction forensic testing for the purpose of establishing innocence. That statutory entitlement gives rise to the constitutionally protected liberty interest Mr. Carruthers asserts and the U.S. Supreme Court has recognized. *Osborne*, 557 U.S. at 68-70.

The Response's primary argument is not that the liberty interest does not exist—it cannot credibly make that claim after *Osborne*, *Skinner*, *Reed*, and *Gutierrez*—but rather that Mr. Carruthers "failed to identify" the interest below. (RB 46.) The Response altogether runs from the weaknesses in the procedures that deprived Mr. Carruthers of his liberty interest and fails for two reasons.

First, Mr. Carruthers did identify the liberty interest below. The Response acknowledges that Mr. Carruthers' First Motion referenced "a liberty interest in demonstrating his innocence with new evidence under state law that creates avenues for doing so." *Id.* That is the *Osborne* interest, stated in *Osborne*'s own words. The Supreme Court in *Osborne* held that a prisoner has a liberty interest in "demonstrating his innocence with new evidence under state law." 557 U.S. at 68. Mr. Carruthers quoted that holding. The District Court's inability to discern the contours of the liberty interest from this language—language drawn directly from *Osborne* itself—was legal error, not a deficiency in Mr. Carruthers' advocacy. The Response's contention that this formulation was too "cursory" (RB 47) to identify a liberty interest that the Supreme Court has recognized in four separate decisions is untenable.

Second, even if the District Court's confusion were understandable—it was not—this Court reviews the denial of a preliminary injunction *de novo* on the legal questions. The question before this Court is not whether the District Court can be "faultedfor its reading of the Motions" (RB 47), but whether Mr. Carruthers has a cognizable liberty interest as a matter of law. He does. *Osborne* recognized that state post-conviction DNA testing statutes may create a liberty interest in accessing biological evidence for testing. 557 U.S. at 68-70. Tennessee has enacted precisely such statutes in the Acts. The liberty interest follows as a matter of law, regardless of how many times the word "liberty" appeared in Mr. Carruthers' Motions.

The Response also attempts to minimize the liberty interest by observing that it is not the same "as a free man's" because Mr. Carruthers was "proved guilty after a fair trial." (RB 39 (quoting *Osborne*, 557 U.S. at 68).) What *Osborne* said next was that a "state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right." 557 U.S. at 68. The Response acknowledges this but misunderstands it. (*See* RB 39.)

Osborne does not hold that the diminished nature of the post-conviction liberty interest eliminates it. To the contrary, *Osborne* holds that the interest exists and is constitutionally protected—it simply subjects the adequacy of the procedures to a different standard than those governing pre-conviction proceedings. 557 U.S. at 69. The question is not *whether* the liberty interest exists; it is whether the procedures are "fundamentally inadequate to vindicate the substantive rights provided." *Id.*

Thus, nothing in the State's argument changes that the District Court erred in analyzing Count V of Mr. Carruthers' Amended Complaint. Rather, the State's Response *confirms* Mr. Carruthers has a cognizable liberty interest.

CONCLUSION

For the reasons stated herein and in Mr. Carruthers' motion to stay and (Dkt. 3) and Initial Brief (Dkt. 7),[2] this Court should stay Mr. Carruthers' execution and reverse the District Court's ruling.

[2] As of the filing of this Reply Brief, the other Appellees have not responded to either of Mr. Carruthers' filings.

Dated: May 19, 2026

Respectfully submitted,

/s/ Melanie C. Verdecia

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on May 19, 2026, a true and correct copy of the foregoing has been served on counsel for all Appellees via the Court's CM/ECF system and electronic email to the following:

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I, Melanie C. Verdecia, certify that this Brief complies with the word limitation requirements of Rule 32(a)(7). Excluding the parts of the Brief exempted by Rule 32(f), this Brief contains 2,172 words.

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